

(2015) 04 GAU CK 0066

In the Gauhati High Court

Case No : Regular Second Appeal No. 51 of 2004

Chayan Chanda and Others

APPELLANT

Vs

Divisional Forest Officer and Others

RESPONDENT

Date of Decision : 23-04-2015

Acts Referred:

Citation : (2015) 3 GLT 138

Hon'ble Judges : Arup Kumar Goswami, J

Bench : Single Bench

Advocate : B.R. Dey, Senior Advocate and T. Roy, for the Appellant; P.S. Deka, GA and R.K. Bora, SC, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Arup Kumar Goswami, J—Heard Mr. B.R. Dey, learned Senior counsel, appearing for the appellants. Also heard Mr. P.S. Deka, learned State counsel as well as Mr. R.K. Bora, learned Standing counsel, Forest Department, Government of Assam, appearing for the respondents. This appeal is directed against the judgment and decree dated 07.11.2003, passed by the learned Civil Judge (Senior Division), Karimganj, in Title Appeal No. 28/2003, allowing the appeal and reversing the judgment and decree dated 16.01.2003 passed by the learned Civil Judge (Junior Division) No. 1, Karimganj, in Title Suit No. 125/2000.

2. The case of the plaintiffs/appellants, as set out in the plaint, is that the plaintiff Nos. 1 to 6 are timber merchants and carrying on business of purchase of timbers/logs from various Transit Pass (T.P.) holders, issued by the Forest Department of Assam and Mizoram, and sale of the same to different stockiests and timber merchants of Delhi, Gujarat and other places in India. In the year 1991, on different occasions, plaintiff Nos. 1 to 6 purchased "huge" number of Teak logs of Mizoram origin from the T.P. holders, whose T.P.s were issued by the Forest Department, Mizoram, and carried the said logs of timber to Balipipla, the nearest forest depot of Assam. On their prayer, Lieu T.P. was issued enabling them to carry the logs up to Chandkhira Railway Yard, the nearest railway station

for onward transit of the logs by railways to different destinations. Plaintiff No. 1 purchased total 178 pieces of Teak logs and carried the same, on the strength of the Lieu T.P., to Chandkhira Railway Yard. 33 pieces of logs were despatched by railways and the remaining 145 pieces remained stacked in the railway yard of Chandkhira Railway Station. Similarly, the details in respect of plaintiff Nos. 2 to 6, with regard to the logs in question were also narrated. So far as the plaintiff No. 7 is concerned, it was stated that he had collected 59 pieces of logs from a private owner at Bazaricherra on the strength of the T.P.s issued by the concerned Divisional Forest Officer and the said logs were carried by him to Chandkhira Railway Station for booking. 404 pieces of Teak logs were stacked in the railway yard of Chandkhira.

3. While the plaintiffs were awaiting despatch, they came to know from a paper publication, issued by the defendant No. 1, that the said logs, lying stacked at Chandkhira Railway Yard, had been seized by the defendant No. 1 and the defendant No. 1 had also invited claims from persons claiming ownership of the seized logs.

4. The plaintiffs/appellants submitted their claims before the defendant No. 1 claiming ownership of the seized logs. However, their claims were rejected. The appeal preferred by the plaintiffs before the Principal Chief Conservator of Forests, Assam, was also rejected. Against the order of the Principal Chief Conservator of Forests, another appeal was submitted on 20.08.92 before the Governor of Assam. At this stage, the plaintiffs came across a letter dated 31.08.92, issued by the Divisional Forest Officer, Karimganj, Assam, enclosing a Sale Notice, for selling of the logs located at Chandkhira Railway Yard, fixing 15.09.92. The suit was, accordingly, filed praying for the following reliefs:

"(i) for declaration that the seizure of 404 pieces of logs lying at Chandkhira Railway Station Yard which has been shown in "Schedule-B" attached to the sale notice, by the defendant No. 1 is illegal, malafide and without jurisdiction and be declared as cancelled.

(ii) for declaration that the notice of the sale published vide order of the defendant No. 1 dated 31.08.92 is also illegal and without jurisdiction.

(iii) for declaration that the plaintiffs are the lawful owner of these logs having been covered by the Lieu T.P.s as well as T.P.s added vide order dated 24.05.02 mentioned above and shown in Schedule-"B" of the sale notice as described in the Schedule below and the defendants have no right to seize this logs or otherwise cause obstructions to the plaintiffs in despatching the same through the Railways to their customer.

(iv) for declaration that the plaintiffs entitled to despatch the remaining number of logs for which the Railway booking orders have already been issued and the defendants are under statutory obligation to issue Railway booking permission for the remaining number of 404 pieces of Teak logs for which the Lieu T.P. was issued to carry up to Chandkhira Railway Yard.

(v) for temporary and permanent injunction to restrain the defendants from selling the said logs described in the Schedule below which has been shown in Schedule-"B" attached to the sale notice enclosed with the notice of D.F.O., Karimganj, dated 31.08.92 and/or otherwise dispose of the said property.

(vi) for issuing directions by way of mandatory injunction to the defendants to issue Railway booking order to the plaintiffs in respect of the logs concerned by their respective T.P.

(vii) for compensation.

(viii) for cost of the suit.

(ix) other reliefs."

5. In the written statement filed, it is stated that on 04.01.92, large-scale illegal felling of Teak trees in the Longai Range Forest was noticed and, out of the trees so felled, many trees were found removed. The field staff was directed to conduct vigorous search to trace out the removed logs/timbers. On the next day, i.e. 05.01.92, the defendant No. 1 along with the Conservator of Forests and others visited Patharkandi Range and noticed huge collection of Teak timbers at the Railway yard of Chandkhira and, as there was striking similarity between these Teak timbers and the timbers felled in the Longai Range in respect of their girth, sizes, age and grain, and also in view of the fact that many of these timbers were found unmarked or wrongly piece-marked, the forest officials having sufficient reason to believe that a forest offence had been committed, the timbers lying at the Chandkhira Railway Yard were ordered to be seized as per the provisions of Section 49 of the Assam Forest Regulation, 1881.

6. It was admitted that 7 (seven) individuals had submitted claims for the Teak timbers seized at Chandkhira Railway Yard. The claims were rejected as none of the claimants could produce any document of ownership except T.P. While stating that a T.R is not a document of title, it was asserted that the T.P.s produced by the claimants could not establish their claims over the forest produces as the timbers in question were found strikingly different from what was recorded in the T.P.s produced by the claimants.

7. On the basis of the pleadings, the learned trial Court framed the following issues:

"(i) Is there any cause of action for the suit?

(ii) Whether the plaintiffs are lawful owners of the suit logs?

(iii) Whether the notice of Sale vide order of the defendant No. 1 dated 31.08.92 is illegal and without jurisdiction?

(iv) Whether the plaintiffs are entitled to get a decree as prayed for?"

8. The plaintiffs' side examined two witnesses and exhibited 40 documents. The defendants examined 1 (one) witness and did not exhibit a single document. The

learned trial Court relied on the T.P.s exhibited by the plaintiffs as well as on Ext.-39 to come to the conclusion that the plaintiffs were the legal owners of the suit logs and, accordingly, held that the Notice of Sale dated 31.08.92 is illegal and without jurisdiction. Resultantly, the suit was decreed.

9. An appeal was preferred by the defendants. The learned Lower Appellate Court opined that ordinarily though it is presumed that T.R. is issued to rightful owners, but where the T.P.s themselves are disputed, it is the onus of the claimants to prove their title. It was also noted that the T.P.s exhibited by the plaintiffs were some photocopies or duplicate copies. The learned Lower Appellate Court also noted that at the relevant point of time, valuable forest produces were smuggled out of the State with the help of fictitious T.P.s and, therefore, it was the bounden duty, on the part of the plaintiffs, to bring the original T.P.s for proper verification by the Court as to whether the TRs, in fact, are in relation to the said timbers or not. Accordingly, the learned Lower Appellate Court held that the T.P.s are nothing but permit of transportation of forest produces and the same could not be considered as Title Deed and, accordingly, the appeal preferred by the defendants was allowed by the learned Lower Appellate Court.

10. By an order passed on 25.06.04, the instant appeal was admitted to be heard on the following two substantial questions of law:

"(i) Whether the transit passes, copies of which have been filed by the plaintiffs in the suit and the said documents being admitted documents, could have been refused to be acted upon by the learned lower Appellate Court while coming to its impugned finding?

(ii) Whether the transit passes issued under the Assam Forest Regulation, 1891, confers title in absence of any other materials."

11. Mr. B.R. Dey, learned Senior counsel for the appellants has submitted that Ext-39 was issued by the Conservator of Forests, Headquarters, wherein it is categorically mentioned that T.R is always issued in favour of the owner of the legal forest produce for movement of forest produces/materials from one place to another and, therefore, it has to be held that the T.P.s are documents of title. As the appellants had exhibited the copies of T.P.s without any objection, the validity thereof cannot be questioned and, therefore, the learned Lower Appellate Court committed manifest error of law in allowing the appeal.

12. Per contra, the learned State counsel as well as the learned Standing counsel, Forest, have submitted that T.P.s are issued to regulate the transit of forest produces and the same cannot be elevated to the status of document of title. It is pointed out that most of the T.P.s were not issued in the name of the plaintiffs. The T.P.s themselves indicate the date of expiry and by the time seizure was made on 05.01.92, the validity of most of the T.P.s had expired in the month of November and December, 1991. It is also submitted that the plaintiffs were silent as to how they had made the purchases and from whom,

though on their own submission, plaintiffs had purchased the logs from traders in Mizoram, who had been issued T.P.s. It is categorically asserted that unfinished logs/timbers can only be purchased from authorized sources.

13. Learned counsel for the respondents have submitted by way of example that the person in whose name the Ext.-2, T.P., was issued, is not a plaintiff. Surely, even assuming that T.P. is considered to be a document of title, no ownership vests on the plaintiffs on the basis of such T.P.S. It is further submitted that the evidence on record discloses that the logs, lying in the Railway Yard, do not match with the description of logs as indicated in the T.P.s. Accordingly, it is submitted that there is no merit in this appeal and the same is liable to be dismissed.

14. I have considered the submissions of the learned counsel for the parties and have perused the materials on record.

15. None of the plaintiffs deposed in the trial. PW1 was appointed as the Constituted Attorney by the plaintiff Nos. 2 to 7 on 17.02.99. On that very same date, by way of execution of another power of attorney by plaintiff No. 1, PW2 was appointed as his Power of Attorney holder. In the cross-examination of PW1, he had stated that he had purchased the suit logs from the plaintiff Nos. 2 to 7 in the year 1991-1992. There was no such averment in the plaint that the plaintiff Nos. 2 to 7 had sold their logs to PW 1, Amio Kanti Dhar Choudhury, and if he had purchased the logs, where is the question of plaintiff Nos. 2 to 7 claiming ownership rights? In his cross-examination, PW1 has also stated that he cannot say the names of the persons from whom the plaintiff Nos. 2 to 7 had purchased the suit logs. He had denied the suggestion that Ext.-39 is not a genuine document PW2 in his cross-examination stated that he had no personal knowledge about the purchase of logs from Mizoram.

16. In his evidence, DW1 has categorically stated that the T.P.s produced by the claimants could not establish their claims over the forest produces as the timbers in question were found strikingly different from what were recorded in the T.P.s, which the plaintiffs had produced. There was no cross-examination of DW1 on that score. If that be so, the conclusion that is to be drawn is that the timbers numbering 404, seized in the Railway Yard of Chandkhira Railway Station, did not match with the description of logs as indicated in the T.P.s. It is also to be noticed that all the T.P.s had lost their validity much before the seizure was effected on 05.01.92. Even if the T.P.s are assumed to be documents of title, on the basis of the said T.P.s., it cannot be held that the plaintiffs are the lawful owners of the logs in question. It also bears repetition that it is not the case of the plaintiffs that the T.P.s were issued in their favour by the authorities. Therefore, in absence of any other document of title in favour of the plaintiffs, it is inconceivable as to how a decree can be passed declaring the plaintiffs as the lawful owners of the logs in question. More so, when the physical identity of the logs did not match with the description of the logs mentioned in the T.P.s.

17. With the above determination, the appeal deserves to be dismissed. However, it is also considered necessary to dwell upon the question as to whether a T.P. is a document of title? Rule 40 of the Assam Forest Regulation, 1891, in Chapter-VI, dealing with control of forest produce in transit, provides power to make rules to regulate transit of forest produces. Accordingly, Transit Rules have been framed. Rule 2(a) of the Transit Rules provides that no forest produce shall be moved except as provided in Sub-rule (b) of Rule 2 unless covered by a pass in the form of:

"(i) a permit issued by a duly authorized Forest Officer under the rules relating to the unclassed state forests or reserved forests, allowing the-holder to remove forest produce from a specified locality; or

(ii) a certificate of origin (in the form prescribed in Appendix-A) in the case of forest produce from private lands for which nothing is due to Government Such certificate must be issued by the owner of such land or his duly authorized agent and must bear such signature or stamp of the owner or his agent as has been previously registered in the local Divisional Forest Office, and such certificate shall be produced by the holder at the revenue station specified therein to be dealt with as noted hereafter; or

(iii) a transit pass (in the form prescribed in Appendix B) issued by a Forest Officer, authorized by the Divisional Forest Officer, in token of full payment of all amounts due to Government on account of the forest produce covered by it. In special cases, the Conservator of Forests may permit the issue of transit passes by any person duly authorized by him."

18. Mr. Dey had urged that Ext.-39 demonstrates that T.P. is a document of title. For a better appreciation of Ext.-39, issued by the Conservator of Forests, Headquarters, the relevant portion of the same is extracted below.

"To whom it may concern

Certified that the Transit pass is always issued in favour of the owner of the legal forest produce for movement of forest materials from one place to another place. Transit Pass is issued after proper verification of the records of timbers, source of origin, measurement, hammers etc. and the place of destination with validity of transit pass is recorded in the transit pass besides details of the forest produce. Transit pass is not issued in favour of any authorized agent or contractors."

19. The aforesaid certificate of the Conservator of Forests, Headquarters, indicates that (i) transit pass is issued in favour of the legal owner of the forest produces for movement of forest materials from one place to another place, (ii) transit pass is issued after proper verification of the records of timbers, source of origin, measurement, hammers, etc., mentioning the details of forest produce (iii) place of destination with validity of T.P. is recorded on T.R, (iv) T.R is not issued in favour of any authorized agent or contractors.

20. Clause 2(a)(iii) of the Transit Rules manifests that T.P. is issued in token of

full payment of all amounts due to Government on account of the forest produce covered by it. It, however, does not lay down that T.P. is to be issued only to the owner of the forest produce. There is no other provision manifesting that T.P. is only to be issued to owner of legal forest produce. Even if Ext.-39 is accepted in its entirety, some RSA 51/2004 document of title has to be produced to enable the authorities to come to the conclusion that the person concerned is the owner of the forest produce, because T.P. is to be issued in favour of the owner. The entry in respect of date of expiry in the T.P. indicates that a T.P. loses not only its utility but also validity, on the date so specified, as its purpose is merely to ensure transit or removal of the named forest produce, through and from the forest, to the named destination within the period allowed by a specified transit route.

21. A document of title does not lose its validity after a certain period. Admittedly, T.P.s are issued only for a limited period and, therefore, it will be difficult to hold that T.P.s are document of title. A document of title, by the very nature of it, has some permanence attached to it, which a T.P. does not possess.

22. In view of the above discussion, I am of the considered opinion that the appeal has no merit and, accordingly, the same is dismissed. No cost. The Registry will send back the LCR.